

AMENDED IN SENATE JULY 7, 2003

AMENDED IN SENATE JUNE 30, 2003

AMENDED IN ASSEMBLY MAY 19, 2003

AMENDED IN ASSEMBLY APRIL 29, 2003

AMENDED IN ASSEMBLY APRIL 9, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL**No. 828**

Introduced by Assembly Member Leno

February 20, 2003

An act to amend Sections 14299, 15210, and 15211 of, and to add Sections 14299.5, 14299.7, and 14299.9 to, the Elections Code, relating to election day procedures.

LEGISLATIVE COUNSEL'S DIGEST

AB 828, as amended, Leno. Elections: election day procedures.

Existing law requires an elections official to deliver additional ballots to a precinct that has an insufficient number of ballots.

This bill would require the elections official to additionally deliver provisional ballot envelopes, as necessary. The bill would require a precinct board that is unable to provide ballots to all voters on election day who are eligible to vote to authorize use of sample ballots in place of a ballot, and, in the event that the precinct board is unable to comply, would require the precinct board to ensure access to a sample ballot for reference and authorize votes to be cast in writing, as specified. The bill would set forth requirements for counting votes cast by sample ballot

and in writing. The bill would require every county utilizing a direct electronic voting system as the primary precinct voting system to establish and implement an alternative voting procedure for use in the event that the direct electronic voting system fails. By placing these additional requirements on the elections official and the precinct board, this bill would impose a state-mandated local program.

The bill would require, in the event that a precinct runs out of ballots, that an investigation be conducted by the Secretary of State and would require the Secretary of State to report the findings of the investigation, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares the
2 following:

3 (1) There are occasions when, either due to human error or
4 other circumstances, precincts utilizing punchcard, optical scan,
5 or other types of paper ballots for voting purposes can run out of
6 ballots.

7 (2) Although existing law requires additional ballots be
8 supplied as soon as possible and that polling places stay open later,
9 eligible voters, through no fault of their own, can still be
10 disenfranchised when a precinct runs out of ballots.

11 (3) Allowing an eligible voter to use a sample ballot to cast his
12 or her ballot, or, if necessary, to write his or her choices on a piece
13 of paper, is an option of last resort intended to ensure that no



1 eligible voter is deliberately or inadvertently disenfranchised
2 should a precinct run out of ballots.

3 (b) The Legislature further finds and declares:

4 (1) Counties are increasingly purchasing or considering the
5 purchase of direct electronic voting systems for precinct use.

6 (2) In addition to the extensive national and state testing these
7 systems undergo during their certification for use in California, it
8 is prudent that counties develop alternative voting procedures for
9 use in the unforeseen and unanticipated event that all of the
10 machines in a precinct fail.

11 SEC. 2. Section 14299 of the Elections Code is amended to
12 read:

13 14299. If a precinct board is unable to furnish a ballot to a
14 qualified voter, because there is an insufficient number of ballots
15 at the precinct, the elections official shall deliver to the precinct
16 additional ballots and provisional ballot envelopes as necessary to
17 ensure that all eligible voters can cast their ballots by 10 p.m. on
18 election day.

19 SEC. 3. Section 14299.5 is added to the Elections Code, to
20 read:

21 14299.5. (a) Notwithstanding Sections 14102 and 14299, in
22 the event that the precinct board is unable to provide a ballot to any
23 voter entitled to vote who comes to the polls to exercise his or her
24 right to vote on election day, the precinct board shall authorize
25 official sample ballots, whether supplied by the precinct board or
26 a voter, to be marked by the voter and used in the place of a ballot.

27 (b) If the precinct board is unable to comply with the
28 requirement set forth in subdivision (a), the precinct board shall
29 ensure that an eligible voter has access to a sample ballot for
30 reference, paper, and pen, and shall allow the voter to cast his or
31 her vote in writing.

32 (c) If the precinct board is unable to comply with the
33 requirements set forth in subdivision (a) and subdivision (b), the
34 precinct board shall ensure that an eligible voter has access to a
35 sample ballot for reference and shall allow the voter to supply
36 paper and a pen to cast his or her vote in writing.

37 (d) A ballot cast pursuant to this section shall be placed in a
38 provisional ballot envelope to be completed and signed by the
39 voter.

(e) A ballot cast pursuant to this section shall be processed and counted in accordance with Sections 15210 and 15211.

(f) In the event that a voter is casting his or her ballot in writing, the precinct board shall direct the voter to write as clearly as possible, and shall inform the voter that if the elections official cannot determine the voter's intention during the canvass process, the vote may not be counted.

SEC. 4. Section 14299.7 is added to the Elections Code, to read:

14299.7. Every county utilizing a direct recording electronic voting system as the primary precinct voting system shall establish and implement an alternative voting procedure to be used in the event that the direct recording electronic voting system fails. The alternative voting system shall be ~~submitted to the Secretary of State for review and comment. An alternative voting procedure must be approved by the county board of supervisors prior to implementation.~~ *developed by the Secretary of State.*

SEC. 5. Section ~~14229.9~~ 14299.9 is added to the Elections Code, to read:

~~14229.9.—~~

14299.9. (a) If a precinct runs out of ballots requiring a voter to cast his or her vote pursuant to an alternative voting method as set forth in Section 14299.5, the Secretary of State shall investigate and report as follows:

(1) The investigation shall at a minimum determine all of the following:

(A) The circumstances that resulted in the precinct running out of ballots.

(B) Whether or not any voters were disenfranchised.

(C) Changes that can be made to prevent reoccurrence, including but not limited to, procedural and statutory changes.

(2) The report of the Secretary of State shall be forwarded to the Assembly Elections, Redistricting, and Constitutional Amendments Committee, or its successor, the Senate Elections and Reapportionment Committee, or its successor, and to the elections official for each county.

(b) In conducting the investigation, the Secretary of State shall confer, as necessary to prepare the report, with elections officials from other jurisdictions who possess experience in the day-to-day operations of conducting elections. The Secretary of State may

1 confer with the County District Attorney or City District Attorney,
2 the Attorney General, or any other appropriate office, agency, or
3 resource.

4 SEC. 6. Section 15210 of the Elections Code is amended to
5 read:

6 15210. In preparing the voted ballots for processing, any
7 ballot that is torn, bent, or otherwise defective shall be corrected
8 so that every vote cast by the voter shall be counted by the
9 automatic tabulating equipment. If necessary, a true duplicate
10 copy of the defective ballot or any sample ballot or handwritten
11 ballot cast pursuant to Section 14299.5 shall be made and
12 substituted therefor, following the intention of the voter insofar as
13 it can be ascertained from the defective ballot. All duplicate ballots
14 shall be clearly labeled “duplicate,” and shall bear a serial number
15 that shall be recorded on the damaged or defective ballot.

16 SEC. 7. Section 15211 of the Elections Code is amended to
17 read:

18 15211. If paper ballots are used for absentee voting or
19 pursuant to Section 14299.5, the canvass may be conducted in
20 accordance with Chapter 1 (commencing with Section 15000), or
21 the elections official may have a true duplicate copy of absentee
22 voter paper ballots or ballots cast pursuant to Section 14299.5
23 made on punchcard ballots, following the intention of the voter
24 insofar as it can be ascertained from the defective ballot, and that
25 shall be verified in the presence of witnesses. After verification the
26 punchcard ballots shall be counted in the same manner as other
27 punchcard ballots.

28 SEC. 8. Notwithstanding Section 17610 of the Government
29 Code, if the Commission on State Mandates determines that this
30 act contains costs mandated by the state, reimbursement to local
31 agencies and school districts for those costs shall be made pursuant
32 to Part 7 (commencing with Section 17500) of Division 4 of Title
33 2 of the Government Code. If the statewide cost of the claim for
34 reimbursement does not exceed one million dollars (\$1,000,000),
35 reimbursement shall be made from the State Mandates Claims
36 Fund.

